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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██████████

DECISION

Case #: HMO - 203704

PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2021, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 9, 2021, by telephone.

The issue for determination is whether the agency correctly denied petitioner's request for a power wheelchair.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Sara McCracken
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 64-year-old resident of Burnett County.
2. Petitioner had a below the knee amputation of his ████████ leg, and uses a wheelchair or a prosthetic to ambulate.

3. Petitioner requested and received approval for a manual wheelchair in 2020.
4. Petitioner has encountered difficulties in using his manual wheelchair due to arthritis and general upper body weakness.
5. Petitioner utilized a prosthetic for a period of time, but had to forego use of the prosthetic due to cellulitis and injury to his stump.
6. Petitioner has since received a new prosthetic, but reports only being able to tolerate its use to ambulate a maximum of 25 feet.
7. Petitioner's provider, on petitioner's behalf, submitted a DME Authorization Request form for a power wheelchair on August 20, 2021, which was denied by Group Health Cooperative (GHC) on that same day.
8. Petitioner filed an appeal of the power wheelchair denial with his HMO on September 14, 2021, and a telephonic hearing before the HMO's Grievance and Appeal Committee was conducted on September 15, 2021. The Committee upheld the denial.
9. Two of petitioner's medical providers subsequently submitted letters on petitioner's behalf, dated October 6, 2021 and October 8, 2021, respectively, supporting petitioner's request for a power wheelchair.
10. On November 11, 2021, petitioner filed an appeal with the Division of Hearings and Appeals.
11. After petitioner's appeal had been filed, the Department of Health Services (the "Department") submitted correspondence dated December 1, 2021, indicating that it was unable to determine whether the HMO's denial was correct based on the information received.

DISCUSSION

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the Department are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The Department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat., §49.45(5); Admin. Code, §DHS 104.01(5)(a)3.

Power wheelchairs are a type of durable medical equipment that must be authorized by the Office of Inspector General before the medical assistance program will pay for it. *See* Wis. Admin. Code § DHS 107.24. When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

At hearing the HMO representative testified that petitioner's request for a power wheelchair was denied due to duplication, as he has already been approved for a manual wheelchair, and due to petitioner's failure to otherwise establish medical necessity with appropriate medical documentation.

Petitioner testified that he is hardly able to move his manual wheelchair, due to his weight and lack of strength in his hands, arms, and shoulders. He reported several falls, and noted that when he attempts to use his prosthetic, he requires a cane. Even then, he noted, he cannot ambulate more than 25 feet.

Petitioner's providers, in their written statements supporting his request, corroborated his testimony noting that:

I feel that the power scooter/chair is reasonable given that he has significant arthritis of his hands making it difficult to operate a manual chair in the setting of his below knee amputation (with subsequent revision of his amputation) and history of bilateral knee arthritis.

Exhibit R-5; and

Patient has a [REDACTED] leg amputation and has had complications with stump infections and is not able to wear a prothesis. He also has bilateral knee osteoarthritis. He has had several falls attempting to ambulate. He is wheelchair bound. He also has bilateral arthritis of the hands which decreases his hand strength and grip strength.

Exhibit R-1.

Based upon petitioner's testimony and the corroborative statements provided by his medical providers, petitioner has established that his manual wheelchair is not sufficient in meeting his ambulatory needs. He has difficulty propelling himself manually due to his weight and lack of strength related to arthritis. He has also established his difficulties with the prosthetics he has received, his medical records include reference to cellulitis and injury to the stump that prohibited his use of the prosthetic. See, Exhibit R-11. I also note that his doctor has noted that he is unable to wear a prosthetic.

The petitioner has successfully rebutted the respondent's argument that a power wheelchair would be duplicative of the manual wheelchair that was approved. Petitioner is unable to utilize the manual wheelchair due to several factors, noted above, and therefore the use of a power wheelchair is not duplicating any service available to him. The petitioner has also successfully rebutted the HMO's contention that he can use prosthetics to ambulate. He has medical documentation verifying his bilateral knee and hand arthritis, as well as complications he suffered while utilizing a prosthetic. His testimony of falls while ambulating was also corroborated by his medical provider.

Based on the record, I find that petitioner has successfully rebutted the respondent's denial and established the medical necessity of the power wheelchair.

I note to Petitioner that his provider will not receive a copy of this Decision. In order to have the requested items approved, he must provide a copy of this decision to his provider. The provider must then submit a *new* DME Authorization Request form along with a copy of this decision.

CONCLUSIONS OF LAW

The evidence in the hearing record established that a power wheelchair is medically necessary; petitioner is thus eligible for Medical Assistance coverage of the items requested in the DME Authorization Request form submitted by Dr. Sarah Anderson to the HMO on August 20, 2021.

THEREFORE, it is

ORDERED

That petitioner's provider is hereby authorized to provide the power wheelchair identified in the DME Authorization Request form submitted by Dr. Sarah Anderson to the HMO on August 20, 2021. Dr. Anderson must submit a new DME Authorization Request form, along with a copy of this decision, to the HMO for approval.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

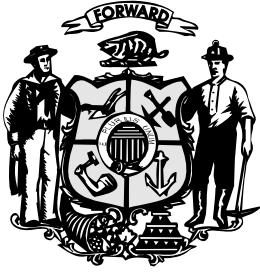
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2022



\s _____

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2022.

Division of Medicaid Services